

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.17601 of 2004

Dated:11.10.2006

Between

R.China Pullaiah

.....Petitioner

and

1.The District Collector, Khammam and
others.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.17601 of 2004

ORDER:

This writ petition is directed against an order dated 15.09.2004 passed by the District Collector in revision No.D/77/2003 confirming the order of cancellation of authorization of the petitioner for the fair price shop of Rompimalla Mallaram village, Madhira Mandal, Khammam District, passed by the 3rd respondent-Revenue Divisional Officer and further confirmed by the 2nd respondent-Joint Collector.

It seems that the petitioner is the fair price shop dealer of Rompimalla Mallaram village, Madhira Mandal, Khammam District. While so, his authorization was cancelled by the 3rd respondent on the ground that he is selling PDS Rice at the rate

of Rs.5.50 per kg instead of Rs.5.25 per kg fixed by the Government and he had not distributed kerosene oil properly during May 2001 to December, 2001 to the coupon holders and diverted 1,000 liters of kerosene oil to black market to gain illegal profits. Aggrieved by the said order, the petitioner has filed a statutory appeal before the 2nd respondent-Joint Collector and Additional District Magistrate, Khammam. The 2nd respondent also confirmed the order passed by the 3rd respondent-Revenue Divisional Officer and rejected the appeal. Being aggrieved by the same, the petitioner further carried the matter in revision before the 1st respondent-Collector and District Magistrate Khammam. The 1st respondent also confirmed the order passed by the 2nd respondent *vide* proceedings dated 15.9.2004. Aggrieved thereby, the present writ petition is filed.

In all, two charges were framed viz., (1) The Dealer is selling PDS Rice at the rate of Rs.5.50 per kg instead of Rs.5.25 per kg fixed by Government.

(2) The Dealer had not distributed the kerosene oil properly during May 2001 to December, 2001 to the coupon holders and diverted 1000 liters of kerosene oil to black market to gain illegal profits. The petitioner submitted his explanation for the said charges.

According to the learned counsel for the petitioner that the explanation offered by the petitioner was not properly considered by the respondents and the 3rd respondent-Revenue Divisional Officer on the basis of some enquiry conducted by the Mandal Revenue Officer, Madhira, behind back of the petitioner, came to the conclusion that the petitioner was selling PDS rice at the rate of Rs.5.50 per kg instead of Rs.5.25 per kg as fixed by the Government. Insofar as the second charge is concerned, again on the basis of a report of the Mandal Revenue Officer, Madhira, stating that he collected coupons with the villagers and counted the same and arrived at the conclusion that the coupons were with the villagers from May 2001 to December, 2001 and that the

dealer had diverted the kerosene oil to the black market, the same was accepted by the Revenue Divisional Officer and cancelled the authorization of the petitioner. The appellate authority and the revisional authority concurred with the findings of the Revenue Divisional Officer. It is unfortunate that as per the Mandal Revenue Officer, he has conducted a detailed enquiry and recorded the sworn statements of the card holders, who deposed that the petitioner was selling PDS Rice at the rate of Rs.5.50 per kg instead of Rs.5.25 per kg. They have not deposed in the presence of the petitioner nor the petitioner was permitted to cross examine them nor their names were revealed. Such an enquiry was conducted behind back of the petitioner and the same could not have been taken into consideration to come to the conclusion that the petitioner was selling PDS rice at the rate of Rs.5.50 per kg instead of Rs.5.25 per kg. Insofar as kerosene oil is concerned, it is stated by the Mandal Revenue Officer that he had collected coupons relating to May 2001 to December, 2001 and on

counting the same, it comes to about 1,000 liters. Therefore, he has simply stated that the dealer had diverted the kerosene oil covered by the said coupons.

On the other hand, in the counter filed by the respondents it is revealed that the petitioner has not taken delivery of kerosene oil of 648 liters for the month of July and August, 2001 due to ill health and he did not distribute the same. However, he has shown the stock of kerosene oil as 140 liters to the Mandal Revenue Officer, in the month of December, 2001. Thus, in all 788 liters of kerosene was not distributed as on the date of inspection. This itself would show that what the Mandal Revenue Officer stated that he has collected coupons and the coupons revealed that 1,000 liters of kerosene oil was not distributed is utterly false. May be, coupons are available, since the petitioner did not lift 648 liters and further the balance was available about 140 liters making it total of 788 liters. The statement of the Mandal Revenue Officer, Madhira is that the petitioner has diverted the stocks and

further findings of the Revenue Divisional Officer and the Joint Collector and the Collector stating that 1,000 liters of kerosene oil was diverted to the black marketing, is baseless and absolutely there is no evidence to this effect..

In view of the above, the impugned order passed by the 3rd respondent-Revenue Divisional Officer as confirmed by the Joint Collector and further confirmed by the District Collector are liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order is set aside. However, instead of conducting a fresh enquiry, the respondent-authorities are directed to treat the period from the date of cancellation till date suspension of authorization as a measure of punishment and the authorization of the petitioner shall be restored forth with.

11-10-2006

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